

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN MICHAEL BROOKS,

Petitioner,

v.

JACK WARNER,

Respondent.

Case No. 3:22-cv-05486-JLR-TLF

ORDER ALLOWING
RESPONDENT TO SUPPLEMENT
RESPONSE AND RENOTING
MOTION TO LIFT STAY AND
AMEND

The District Court has referred this 28 U.S.C. § 2254 action to United States Magistrate Judge Theresa L. Fricke. Currently before the Court is petitioner John Michael Brooks' motion to lift stay and for leave to file an amended petition for writ of habeas corpus (Dkt. 37), and petitioner's subsequently filed complete proposed amended petition (Dkt. 43).

BACKGROUND

On July 1, 2022, petitioner signed his original petition for writ of habeas corpus under 28 U.S.C. § 2254. Dkts. 1, 8. Petitioner challenges his custody under a Cowlitz County Superior Court judgment and sentence. Dkts. 1-1, 8. On July 29, 2022, the Court issued an order to show cause advising petitioner that his petition appeared to be "mixed" – presenting both exhausted and unexhausted claims – and directing petitioner to notify the Court whether he wished to: (1) dismiss the mixed petition without prejudice, allowing him to present his unexhausted claim in state court and then return

1 to federal court to file a new habeas petition containing all of his claims; (2) stay the
2 mixed petition to allow the petitioner to present his unexhausted claims to the state
3 court and then return to the federal court for review of his perfected petition; or (3)
4 delete the unexhausted claim and proceed with the remaining exhausted claims. Dkt. 4.
5 On August 3, 2022, petitioner filed a response requesting that the action be stayed. Dkt.
6 5.

7 The Court directed service of the petition and the motion to stay and directed the
8 respondent to respond only to the petitioner's motion to stay. Dkt. 10. On September 29,
9 2022, the respondent filed a response agreeing to a stay of the action. Dkt. 16. On
10 December 12, 2022, the Court issued an order granting the motion to stay and abey
11 proceedings. Dkt. 17.

12 On August 31, 2024, petitioner filed the pending motion requesting the Court lift
13 the stay and grant him leave to file an amended petition to include, it appears, his
14 previously unexhausted claim. Dkt. 37. Respondent filed a response stating they do not
15 oppose petitioner's request to lift the stay or his request to amend the petition but
16 request 45 days to respond to an amended petition. *Id.*

17 By order dated October 10, 2024, the Court noted that petitioner had failed to
18 include a complete proposed amended petition with his motion to amend in accordance
19 with LCR 15 and Rule 2, U.S.C. foll. § 2254. Dkt. 39. However, the Court noted that the
20 respondent did not oppose the motion to amend based upon the claim, arguments, and
21 supporting documents petitioner indicated he wished to add. *Id.* Accordingly, the Court
22 ordered petitioner to file a complete proposed amended petition by October 23, 2024,
23 including *all* of the claims he intended to pursue in this action. *Id.* The Court advised
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petitioner that the amended petition would act as a complete replacement for his original petition, not as a supplement, and should therefore not incorporate his prior pleadings by reference. *Id.* The Court further directed that the respondent may file a supplemental response to the petitioner's submission of the proposed amended petition if they deem appropriate by November 6, 2024. *Id.* The Court stated that if the respondent did not file a supplemental response, the Court would rely on the previously filed response. *Id.* The Court then re-noted the motion to lift the stay and to amend (Dkt. 37) to November 6, 2024.

On October 23, 2024, petitioner filed a complete proposed amended petition but failed to sign and date his filing. Dkt. 40. Accordingly, the Court issued two subsequent orders directing petitioner to sign and date his proposed amended petition and re-file it with the Court. Dkts. 41, 42, On January 11, 2025, petitioner filed a complete signed and dated proposed amended petition. Dkt. 43. Accordingly, as indicated in its previous orders, the Court will allow respondent the opportunity to supplement his response to the motion to lift stay and amend (Dkt. 37) based upon the filing of the complete proposed amended petition (Dkt. 43). The Court hereby ORDERS:

- (1) Respondent may file a supplemental response to petitioner's motion to lift stay and amend (Dkt. 37) based upon the submission of the proposed amended petition (Dkt. 43) by **January 24, 2025**. If respondent does not file a supplemental response, the Court will rely on the previously filed response (Dkt. 38).

1 (2) The Clerk is directed to re-note petitioner's motion to lift stay and amend
2 (Dkt. 37) to **January 24, 2025**.

3 Dated this 15th day of January, 2025.

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6 Theresa L. Fricke
7 United States Magistrate Judge
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